



TESTIMONY IN SUPPORT OF Senate Bill 51:

Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Heather Warnken, Executive Director, Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: February 1, 2023

Good afternoon Chairman Smith and members of the Committee. My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law’s Center for Criminal Justice Reform. The Center is dedicated to supporting community driven efforts to improve public safety and address the harm and inequity caused by the criminal legal system, and we are grateful for this opportunity to testify in support of Senate Bill 51.

The Fourth Amendment states that people have the right to be secure in their persons, houses, papers, and effects against unreasonable searches. Unfortunately, the privacy rights enshrined in the Constitution and the Maryland Declaration of Rights are only as strong as the doctrines and laws that have developed around them. In the case of the Fourth Amendment, a long list of judicially-crafted exceptions combine to allow the government to stop and search both people and their automobiles, even when they are engaged in lawful activities. Moreover, the courts have openly endorsed the use of these exceptions as a pretext for the police to conduct fishing expeditions that might turn up evidence of criminal activity. See e.g., *Whren v. United States*, 517 U.S. 806 (1996).

For many now well-documented reasons, this leads to the overcriminalization and invasion of dignity and privacy rights of Black Marylanders and other persons of color at greatly disproportionate rates. As highlighted by other witnesses, the statistics are staggering, and the case law further demonstrates why weak protection for privacy rights hurts poor communities of color the most. In the case *In re D.D.*, 479 Md. 206 (2022), the Maryland Court of Appeals found that an officer smelling marijuana had the right to detain five young men and that, because they were dressed in “baggy clothes” and had “evasive body language,” the officer could search them as a safety precaution.

Furthermore, in late 2022, the now Maryland Supreme Court held in *Tyrie Washington v. State of Maryland* that law enforcement officers had reasonable articulable suspicion to stop based on a defendant’s unprovoked flight from officers in a “high-crime area”, notwithstanding a lengthy accounting for the realities of disproportionate police violence and harassment of Black residents, leading to uprisings in Baltimore and beyond.



These cases and more demonstrate why it is imperative for the legislature to act, and not to wait for the courts, which have been inconsistent and insufficient in addressing these issues alone.

We also believe this bill to be in furtherance of, rather than a hindrance to, public safety. The enormous discretion and power furthered by officers' widespread uses of odor searches leads not only to rights violations, but lazy approaches to policing that can jeopardize the ability of evidence to hold up in court. This discretion too often invites officers to manufacture justifications or include lies in their testimony, a disturbingly pervasive phenomenon. See, for example, findings and recommendations regarding the prevalence of disregard for truth in the recent independent investigation surrounding the origins, causes and consequences of the Gun Trace Task Force:

“It should be obvious that the integrity of our criminal justice system relies on the honesty and integrity of police officers. Providing false or misleading information to BPD, prosecutors, or courts for whatever purpose undermines one of the central pillars of our system of criminal justice. And yet our investigation revealed that for many officers, the practice of submitting false, incomplete, or misleading information in police reports, in applications for search warrants, and in court testimony began early in their careers. According to the witnesses we interviewed, this has been a widespread problem. We have no reliable way to measure the extent to which it remains.”

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Also counter to public safety, overreliance on searches based on the odor of a now legal substance can distract police from more effective evidence based policing strategies and true investigative work. The continued use of police resources on marijuana is deeply problematic especially given the abysmally low clearance rates for serious violent crime in jurisdictions like Baltimore, Prince George's County and more, where arrests of disproportionately Black residents for low level offenses continue to produce tremendous volume of cases and immeasurable community harm.

Given the recent tragic events that led to the horrific death of Tyre Nichols, and countless other documented incidents in Baltimore and throughout the country, it is imperative that we act to limit unnecessary interactions with law enforcement, and the harassment and violence it too often leads to with impunity, especially when not captured on film. This is vital to the uphill work of building trust between police and the communities they are supposed to serve. The use of this justification alone has long been a significant impediment to community collaboration and trust, especially given the insufficiency of scent alone as a basis for determining whether an individual is in possession of marijuana at all.

This bill is a logical and needed extension of the legislature's work to legalize recreational marijuana, to address the pervasive racial disparities in the system, and to further real public safety.

For these reasons, we urge a favorable report on Senate Bill 51.